



Federal Issues Affecting NC Agriculture

Agriculture and Forestry
Awareness Study Commission

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Federal Immigration Law



Agriculture's Unique Labor Needs

- Farms are labor-intensive businesses
- Decades ago, farms could meet labor demand through local workers and family
- But changing demographics & market forces mean NC farmers often struggle to hire and retain competent domestic employees
- 2013 NCFB survey: 1/3 of NC farmers lost income in 2012 due to lack of workers



U.S. Immigration Law Hurts, Rather than Helps

- NC farmers rely on foreign employees
- But unfortunately, U.S. immigration law hinders ag-employers from hiring/retaining qualified employees
- H-2A program is expensive, cumbersome & exclusive to seasonal agriculture
- Solution: Federal immigration reform



Immigration Reform “Must Haves”

- Federal immigration reform must have three components:
 1. Improved border/interior enforcement
 2. Reasonable approach to undocumented population
 3. Market-based foreign guest worker programs



Congress' Inaction = Frustration

- Regrettably, Congress' inability to act has caused frustration in the States
- Several States have enacted laws to address immigration-related problems
- Most notably, Alabama, Arizona, & Georgia adopted bills requiring employers to use the voluntary, federal E-Verify program
- NC joined this group in 2011, but revised its E-Verify law in 2013



Hope Springs Eternal

- In sum, NC farmers need a reliable workforce to continue to grow NC's number one industry
- NCFB is hopeful that Congress will enact immigration reform legislation this year
- The U.S. Senate passed S. 744 in late June 2013 by a 68-32 vote
- The U.S. House has not yet acted, but may take up legislation in this summer





Health Care Reform



PPACA Overview

- Patient Protection and Affordable Care Act
 - Individual Mandate
 - Employer Requirements
 - Health Insurance Market Reforms
 - Medicaid Expansion



PPACA Overview

- Patient Protection and Affordable Care Act passed Congress in 2010
- Survived U.S. Supreme Court challenge in 2012, mostly
 - Mandatory Medicaid expansion was made optional for all States



Individual Mandate

- Requires most individuals to have minimum coverage or pay a tax penalty beginning in 2014
- Individual Penalties:
 - 2014 \$95 or 1% of income
 - 2015 \$325 or 2% of income
 - 2016 \$695 or 3% of income



Employer Requirements

- Employers with 50 or more FTEs are required to provide health insurance coverage to employees, “large employer”
 - Generally applies in 2015 to employers with >100 employees, in 2016 for >50 employees
 - Seasonal workers must be counted in FTE calculation
 - Coverage is required to be provided only to full-time employees



Employer Requirements

- Health insurance coverage must be “affordable” and meet “minimum essential coverage”
 - Plan must cover at least 60% of the value of benefits provided
 - Employee’s share of premium cannot exceed
 - 9.5% of household income, or
 - 9.5% of W-2 income



Employer Requirements

- Penalties for failing to comply:
 - Does not provide “minimum essential coverage”
 - \$2,000 for each employee (excludes 1st 30 employees)
 - Does not provide “affordable” coverage
 - \$2,000 for each employee (excludes 1st 30 employees), or
 - \$3,000 for each employee that receives a subsidy in the Exchange



Seasonal Workers

- The ACA addresses the meaning of seasonal worker in the context of whether an employer meets the definition of an applicable “large employer”
- Generally, if seasonal workers employed for less than 4 months would cause the employer to exceed 50 FTEs, then not considered a “large employer”



Seasonal Workers

- Example: Farm has 40 full-time employees from Jan-Dec, and 80 full-time seasonal workers from Jun-Aug
 - $40 \text{ FTE} \times 9 \text{ months} = 360$
 - $120 \text{ FTE} \times 3 \text{ months} = 360$
 - $(360+360=720)/12 = 60 \text{ FTE avg/month}$
 - Seasonal worker exception would apply and farm would not be “large employer”



Seasonal Workers

- Example: Farm has 20 full-time employees from Jan-Dec, and 80 full-time seasonal workers from May-Sept
 - $20 \text{ FTE} \times 7 \text{ months} = 140$
 - $100 \text{ FTE} \times 5 \text{ months} = 500$
 - $(140+500=640)/12 = 53 \text{ FTE avg/month}$
 - Seasonal worker exception would not apply and farm would be “large employer”



Seasonal Workers

- The ACA does not define seasonal workers for the purpose of a “large employer” providing coverage to full-time employees
- The ACA provides a safe harbor to “large employers” by allowing a reasonable, good faith interpretation of the term seasonal employee and providing for a measurement period



Seasonal Workers

- In general, seasonal workers for which the customary annual employment is 6 months or less will not be considered full-time employees
- Newly hired seasonal workers may be subject to a 3 to 12 month measurement period to determine full-time status
- Full-time status is >30 hrs/week



Additional Considerations

- Safe harbor provisions are only applicable through 2014
 - Future rulemaking may define
- Applicability of individual mandate and employer shared responsibility to foreign workers
- Rehire of seasonal workers
 - 26 week separation considered new hire





Questions?





Wetlands Issues

